

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

APRIL SCARLOTT,

Plaintiff,

V.

NISSAN NORTH AMERICA, INC.,
NISSAN MOTOR ACCEPTANCE CORP.,
CLEAR LAKE NISSAN, and HURRICANE
AUTO CARE & ACCESSORIES, INC.,

Defendants.

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Case No. 4:10-cv-04865

**MOTION TO DEPOSIT SETTLEMENT
FUNDS INTO COURT REGISTRY**

COMES NOW Defendant Nissan North America, Inc. (“NNA”) and files this its Motion to Deposit Settlement Funds into Court Registry, and would respectfully show the Court the following:

NNA files this motion to seek a court order directing settling Defendants to deposit settlement funds into the court registry pending final disposition of this case. Currently pending are Plaintiff's Second Amended Complaint and Defendant's First Amended Counterclaim. Plaintiff's Complaint and prior pleadings contain frivolous and baseless claims lacking legal or factual foundation.

On April 11, 2011, Plaintiff and Co-Defendants NMAC and Clear Lake Nissan reached a settlement agreement in which Co-Defendants agreed to pay Plaintiff an undisclosed amount. NNA's counterclaim remains pending. Because NNA's claim exceeds \$100,000, and because Plaintiff has shown an inability to meet her current debt obligations,¹ NNA requests a court order

¹ Ms. Scarlott has been late on her car payments repeatedly.

directing settling Defendants to deliver the settlement funds into the registry of the Court pending final disposition of this case.

Such an order is appropriate because Plaintiff's claims brought against NNA under the Texas Deceptive Trade Practices Act are "groundless in fact or law or brought in bad faith, or brought for the purpose of harassment." Should NNA prevail, it would be entitled to reasonable and necessary attorneys' fees and court costs pursuant to Texas Business and Commerce Code § 17.50(c). NNA has sustained monetary damages as a result of the groundless suit Plaintiff brought against it. NNA continues to sustain monetary damages due to Plaintiff's and her counsels' actions in maintaining this suit against NNA.

Requiring Plaintiff to deposit such funds into the registry of the Court prevents the loss of funds that might be used to satisfy a judgment against the Plaintiff. These funds may be the sole source of funding for such a judgment. Thus, an order directing Defendants to deposit funds into the court registry protects NNA's interests pending final resolution of the case.

WHEREFORE, PREMISES CONSIDERED, Nissan North America, Inc. respectfully prays that the Court GRANT its Motion to Deposit Settlement Funds into Court Registry and enter an Order directing settling Defendants to place the settlement funds into the court registry pending final disposition of this case, and that NNA be awarded all costs and expenses incurred in its behalf, pre- and post-judgment interest, if applicable, and for such other and further relief, both at law or in equity, to which it may show itself justly entitled.

Respectfully submitted,

s/ Jeffrey S. Patterson

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**ATTORNEYS FOR DEFENDANT
NISSAN NORTH AMERICA, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM-ECF system on the 21st day of April, 2011.

s/ Jeffrey S. Patterson

JEFFREY S. PATTERSON

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Defendants has conferred with Plaintiff's counsel via telephone and e-mail but got no response regarding this Motion. Consequently, we submit the motion for the Court's consideration.

s/ Jeffrey S. Patterson

JEFFREY S. PATTERSON